

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-10 ISO-00 SNM-02 AID-05 EB-08 OES-07
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DRAFTED BY L/SFP:LFIELDS/S/NM:MLCRESHES:OSD

APPROVED BY S/NM:MFALCO

AID/GC:J. FINK (DRAFT)

AID/AG:HCROMER (INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA

INFO AMEMBASSY LA PAZ

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FOR AAG USAID LA PAZ

E.O. 11652: N/A

TAGS: SNAR, PE

SUBJECT: LA REGIONAL COMMUNICATIONS SYSTEM

REF: LIMA 6519

1. THE FOLLOWING LEGAL OPINION WAS DRAFTED IN L AND
CLEARED BY AID/GC WITH RESPECT TO POSSIBLE VIOLATION OF
SECTION 660 OF THE FOREIGN ASSISTANCE ACT AS AMENDED (FAA)
AND MEETS POINTS RAISED IN REFTEL RE THE TELECOMMUNICATIONS
SYSTEM. THE OPINION WAS DRAFTED IN REPLY TO POINTS RAISED
IN AID AUDIT REPORT (77-163) AS WELL AS AN AUDIT IN
THAILAND. WE PARAPHRASE IT BELOW.

2. THIS AUDIT REPORT APPARENTLY HAS NOT TAKEN INTO ACCOUNT
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THE EXEMPTION PROVIDED IN SECTION 660 (A) (1) OF THE FAA.
THAT EXEMPTION PROVIDES THAT THE PROHIBITION AGAINST THE USE
OF FAA FUNDS TO PROVIDE ANY ASSISTANCE TO LAW ENFORCEMENT
FORCES OF FOREIGN GOVERNMENTS "SHALL NOT APPLY ... WITH RES-
PECT TO ASSISTANCE AUTHORIZED UNDER SECTION 482 OF THE
(FAA)." THIS IS BROAD STATUTORY LANGUAGE WHICH WOULD BE
TANTAMOUNT TO A BLANKET WAIVER FOR SECTION 482 ASSISTANCE

WHICH MUST MEET THE TEST OF SECTION 481 THAT THE ASSISTANCE BE FURNISHED "FOR THE CONTROL OF THE PRODUCTION OF, PROCESSING OF, SMUGGLING OF, AND TRAFFIC IN, NARCOTIC AND PSYCHOTROPIC DRUGS."

3. THERE ARE CERTAIN PRACTICAL CONSIDERATIONS THAT OPERATE WITH RESPECT TO THE NARCOTIC ENFORCEMENT PROGRAMS OF PERU. THE NARCOTIC ENFORCEMENT ACTIVITIES, INCLUDING INVESTIGATIVE AND INTELLIGENCE ACTIVITIES, ARE THE RESPONSIBILITIES IN PERU OF THE PERUVIAN INVESTIGATIVE POLICE (PIP). THIS LAW ENFORCEMENT AGENCY OBVIOUSLY HAS BROADER RESPONSIBILITIES THAN NARCOTIC INTERDICTION AND CONTROL. UNDER THESE SPECIFIC CIRCUMSTANCES, IF THE PURPOSE OF SECTION 481 IS TO BE CARRIED OUT, IT IS NOT IMPERMISSIBLE TO ALLOW EQUIPMENT HAVING A MULTIPLE-USE CAPABILITY PROVIDED FOR THE INTERNATIONAL NARCOTIC CONTROL (INC) PURPOSES UNDER SECTION 481 OF THE FAA TO BE USED INCIDENTALLY FOR OTHER POLICE PURPOSES.

4. WHEN CONGRESS AUTHORIZED THE NARCOTIC CONTROL ASSISTANCE PROGRAM CONTEMPLATED BY SECTION 481, IT SPOKE IN TERMS OF THE AUTHORITY OF THE PRESIDENT TO PROVIDE ASSISTANCE TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS ON "SUCH TERMS AND CONDITIONS AS HE MAY DETERMINE" TO FURTHER THE INTERNATIONAL NARCOTICS CONTROL PROGRAM. MOREOVER, SECTION 481 CONTAINS A "NOTWITHSTANDING CLAUSE" LIMITED OFFICIAL USE

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WHICH WOULD SUGGEST BROADER LEEWAY IN ACCOMPLISHING THE AIMS OF THE LEGISLATION. THIS IS NOT TO SAY, HOWEVER, THAT WE SHOULD NOT MAKE EVERY REASONABLE EFFORT TO RESTRICT NON-NARCOTIC USES OF EQUIPMENT TO THE MINIMUM THAT IS CONSISTENT WITH THE ACHIEVEMENT OF THE SECTION'S OBJECTIVES.

5. FOR THE ABOVE REASONS IT IS MY OPINION THAT THE AUDIT REPORT'S CONCERNS OVER A VIOLATION OF SECTION 660 OF THE FAA ARE UNFOUNDED. THE SPECIFIC EXEMPTION FOR SECTION 482 FUNDS AND THE LEGISLATIVE INTENT WITH RESPECT TO FLEXIBILITY FOR FUNDING OF THE INTERNATIONAL NARCOTICS CONTROL PROGRAM ALLAY ANY CONCERN OVER A VIOLATION OF THAT SECTION. WE RESERVE COMMENT, HOWEVER, ON WHETHER THERE HAVE BEEN SUFFICIENTLY STRINGENT END-USE CONTROLS OVER THE EQUIPMENT SUPPLIED. THE ABSENCE OF SUCH CONTROL, HOWEVER, WOULD NOT VIOLATE SECTION 660 ALTHOUGH THEY COULD RAISE SERIOUS POLICY AND MANAGERIAL QUESTIONS. REMEDIAL STEPS, IF ABUSES HAVE OCCURRED, MAY BE REQUIRED.

6. WE SHOULD SEEK TO CONVEY TO THE RECIPIENT COUNTRIES THAT THE PRIMARY PURPOSE IN PROVIDING SUCH ASSISTANCE IS RELATED TO NARCOTICS CONTROL EFFORTS AND IT IS THE INTEN-

TION OF THE UNITED STATES GOVERNMENT THAT THEY BE USED
ESSENTIALLY FOR THAT PURPOSE. END OF PARAPHRASE.

7. PROAG LANGUAGE NOTED IN PARA 2 OF REFTEL SEEMS TO MEET
THE PROVISIONS OF LEGAL OPINION, PARTICULARLY PROVISION
IN PARA 6 ABOVE.
8. DEPARTMENT IS PREPARING GUIDELINES FOR FIELD DISSEMINA-
TION SETTING FORTH WHAT CONSTITUTES PERMISSIBLE USE OF INC
EQUIPMENT WITHIN THE MEANING OF SECTION 481 AND 482 OF THE
FOREIGN ASSISTANCE ACT AND TAKING INTO ACCOUNT THE EXEM-
TION PROVIDED IN SECTION 660(A) (1) OF THE SAME ACT. CHRISTOPHER

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Control Number: n/a
Copy: SINGLE
Sent Date: 31-Aug-1977 12:00:00 am
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Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
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